IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.21752 of 2007
With
SPECIAL CIVIL APPLICATION No.21754 of 2007
To
SPECIAL CIVIL APPLICATION No.21771 of 2007
With
SPECIAL CIVIL APPLICATION No.22350 of 2007
To
SPECIAL CIVIL APPLICATION No.22352 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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AMALIYAR JAYESHKUMAR VICHIYABHAI & ORS. - Petitioners
Versus
STATE OF GUJARAT & ORS. - Respondents

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Appearance :
MS SEJAL K MANDAVIA for Petitioners
MR SS SHAH, GP with Ms.Sandhya Natani, M/S.Vinay Pandya, Prashant Mankad, Mr.Amit Patel, Mr.Hukum Singh, AGPs for Respondent Nos.1-2
MR AMAR D MITHANI for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 05/09/2007

COMMON ORAL JUDGMENT

1. Heard learned advocate Ms.Sejal K. Mandavia on behalf of the petitioners and learned Government Pleader Mr.S.S.Shah with learned Assistant Government Pleaders Ms.Sandhya Natani, Mr.Vinay Pandya, Mr.Hukum Singh, Mr.Amit Patel and Mr.Prashant Mankad, appearing for the respondent-State Authorities.

2. In this group of petitions, prayer made in paragraph 7(A) is to quash and set aside the Government Policy dated 13th September 2001 along with the guidelines of calculation of marks by holding that it is unjust, arbitrary and violating the fundamental rights of the C.T.I. Candidates and, therefore, it should be struck down. The prayer 7(B) is to hold that for the post of Craft Instructors, the C.T.I. candidates are more qualified and they should be given preference and priority, for that the calculation of the marks decided by the Government may also be quashed and set aside. Pending the

petitions, a prayer is made to grant stay against the operation, execution and implementation of the new policy dated 13th September 2001 along with guidelines and to restrain the respondents from preparing the selection list and giving the appointment pursuant to the advertisement (Annexure-D) relying upon the new policy.

3. The Policy dated 13th September 2001 is placed on record (Annexure-A, Page 19). Ms.Sejal Mandavia, learned advocate for the petitioners, pointed out Schedule-I at Page 22 of the petition and submitted that as per Item No.2, ITI and apprenticeship passed candidate is entitled to 0.20 X A [SSC Marks] + 0.27 x B [ITI Marks] + 0.53 x C [Marks of Apprentice Training of 2 Years]. Ms.Mandavia also referred to Item No.4 on Page 23, which relates to diploma holders and calculation for diploma holders for the post in question is as under:

> 0.20 x A [SSC Marks] + 0.80 x D (Diploma Marks] x Q, which includes minimum passing marks in ITI/ATI
>
> $$Q = \frac{\text{minimum passing marks in ITIATI}}{\text{minimum passing marks in diploma}}$$

$$= \frac{[357/700]}{[36/100]} = 1.418$$

She further referred to Item No.4 on Page 24, which provides that additional five marks is to be given to diploma holder. Therefore, she submitted that there is discrimination between the CTI and diploma holder and while drafting the policy, the department has not considered the candidates of CTI equivalent to diploma holders and the diploma holders have been given preference by the department. She, therefore, submitted that chance of selection for CTI Candidates will decrease or less in comparison to the diploma holders. Ms.Mandavia further submitted that in formula, CTI marks are not added nor taken into account and “Q” benefit must be given to the petitioners, which has not been given by the department. According to her submission, the whole method of selection while preparing the selection list on the basis of educational qualifications passed by the candidate is arbitrary, capricious and requires to be quashed. She also submitted that initially before this policy, there was written test

and interview and thereafter, selection was made on the basis of educational qualifications, which was a reasonable procedure and method adopted by the department. This change in policy has adversely affected the right of the petitioners for the post of Craft Instructor. Except these, no other submissions are made by Ms.Mandavia, learned counsel for the petitioners and no decision is relied upon by her.

4. Learned Assistant Government Pleader Ms.Sandhya Natani appearing with other Assistant Government Pleaders for the respondent–State Authorities has filed a detailed affidavit-in-reply, a copy of which is served to the petitioners' advocate. According to the learned Assistant Government Pleader, the advertisement was published in Gujarat Samachar Daily and other newspapers on 8th August 2007 for 237 posts of *Kaushalya Sahayak* and 20 posts of *Group Kaushalya Sahayak* and the application was to be submitted till 31st August 2007, but the said date for inviting application is now extended further to 29th September 2007. The answer given by the department to the contention raised by the

petitioners that the petitioners have grievance against the “Q” i.e. [Quotient = minimum passing marks in ITI-ATI / minimum passing marks in diploma = (357/700)/(36/100) = 1.418] which is given to diploma holder, is that the said quotient is given to equalize the diploma holders with the ITI passed as the qualification of diploma is more higher compared to the qualification of ITI. According to the respondents, in Recruitment Rules, it is very specifically mentioned that preference shall be given to a candidate who in addition possesses instructors training at the Central Training Institute or diploma holders in the appropriate branch in the trade concerned. The said Recruitment Rules of 23rd December 1969 are annexed to the reply. It is submitted that the State Government has passed resolution dated 13th September 2001 considering the said Recruitment Rules and published the guidelines regarding the merit formula for the post of *Kaushalya Sahayak* and *Group Kaushalya Sahayak* and also specifically classified the criteria for the selection of candidates for ITI pass or apprenticeship pass, ITI + apprenticeship pass or diploma. Multipliacation is given according

to the qualification and the weightage of the course. In the said Government Resolution, it is mentioned that additional five marks is required to be given to the candidates, who have passed CTI Course and the diploma course as per the required preference mentioned in the Recruitment Rules. According to the respondents, the diploma course is more wide and higher compared to the ITI Course and the percentage for passing the diploma course is 36% while the percentage required for passing ITI course is 51% and, therefore, considering the passing qualification for the eligibility criteria for selecting the candidates for the post of *Kaushalaya Sahayak,* diploma candidate would not get opportunity to get selected as their passing percentage is only 36% and the merit for selection of the passed candidates would be more favourable for the candidates who are from ITI. It is submitted that, therefore, with an intention to give a preference for the higher qualification some additional weightage is required to be given to the candidates who are higher qualified. Moreover, looking to the merits for diploma engineering course, nearby 75% to 80% is

required for admission while there is no such higher percentage is required for ITI admission. There are total 145 institutes for the ITI all over the Gujarat and each institution has its own merits/percentage criteria for admissions, which is very low as compared to Diploma Engineering. The merit for admission in diploma engineering for the year 2006-2007 is also annexed to the reply. According to the respondents, ITI candidate is limited/restricted with only a particular subject such as; ITI with wireman, ITI with electrical; ITI with armature motor rewinding; while an electrical diploma is itself qualified for all trades and, hence, in the advertisement if a fitter, turner, machinist or a general mechanic is required then only one diploma with mechanical or diploma production engineer will be eligible for all the mechanical trades while ITI candidate cannot be eligible as he will be restricted only for his particular trade such as only for fitter, turner, machinist and general mechanic. According to the respondents, the spectrum for diploma engineer is broader compared to the spectrum for ITI pass candidate. A diploma holder is having a

very wide range and can be adjusted/compensated in any of the trades whenever is required. In the advertisement, the groups for which the candidate is required are elaborately described in Columns 1, 4, 8 and 10, which are quoted as under:

	Trade	***Diploma Engineer***	***ITI***
1.	Fitter, Turner, Machinist, General Mechanic	Diploma in Mechanical or Production Engineer	ITI Fitter, ITI Turner, IT Machinist, ITI General Mechanic
4.	Electrician, Wireman, Amateur Motor Rewidner	Diploma in Electrical Engineer	ITI Electrician, ITI Wireman, ITI Amateur Motor Rewinder
8.	Mechanic Autoelectronic, Two wheeler Autorepair, Driver-cum-Mechanic	Diploma in Automobile Engineer Only	ITI Mechanic Autoelectronic, ITI Two Wheeler, Autorepair, ITI Driver cum Mechanic
10.	Cutting & Sewing, Embroidery & Needle work, dress making, computer aided dress making and dress design, men's and women garment making, apparel	Diploma in costume designing & dress making only / computer aided costume design and dress making	ITI Cutting & Sewing, ITI Embroidery & needle & needle work, ITI dress making, ITI computer aided dress making and dress design, ITI men's and women garment making, ITI apparel

5. Learned Assistant Government Pleader Ms.Sandhya Natani also pointed out that similar matter had been filed earlier before this Court challenging the same Government Resolution/Formula, which was rejected by this Court *vide* order dated 19th April 2002. In the reply, the answer given to the question raised by the petitioners that what is the meaning of “Q” and why “Q” is applying in the case of the diploma holder candidates, is that “Q” is nothing but selection for balancing the meritorious candidates. The respondents have clarified that the syllabus of the diploma holder candidate is certainly higher as compared to the ITI candidates/present petitioners. The learned Single Judge has observed in order dated 19th April 2002 that the formula worked out by the authority is just and fair, preference should be given for higher qualification and some additional weightage is to be given to the higher candidates. Learned Assistant Government Pleader Ms.Natani particularly pointed out that merely a weightage is given to the higher qualified person, which would not automatically entitled the said candidates to be selected to the post in question and

to be appointed. The decision of the learned Single Judge is annexed to this reply by the respondents. Learned Assistant Government Pleader Ms.Natani also submitted that ITI is limited and restricted to only one trade while diploma holder is having a broad spectrum/range and qualification level is also much more higher than the ITI Candidates. Therefore, some preference is required to be given to the diploma holder according to the Recruitment Rules and the Policy. Learned Assistant Government Pleader Ms.Sandhya Natani submitted that there is no arbitrariness or discrimination between the petitioners and the diploma holders.

6. In Special Civil Application No.11944 of 2001 and allied matters, this Court examined the same policy. Though the policy was not challenged before the learned Single Judge by those petitioners, the calculation of giving marks including the weightage to the diploma holder has been examined by this Court in order dated 19th April 2002 and 4th May 2002. In the said decision, this Court in detail examined merits and observed in paragraphs 3, 6 and 7 as

under:

> “3. The petitioners are the persons who possess the qualifications for appointment to the post of Craft Instructor in Industrial Training Institute (ITI) run and managed by the State Government. In addition to the requisite qualification, the petitioners also possess the preferential qualification of Advanced Training Institute (ATI)/Central Training Institute (CTI). The petitioners, therefore, claim that having regard to the preferential qualification possessed by them they ought to be given priority in the matter of selection for appointment to the post of Craft Instructor. However, the selection has been made in contravention of the relevant rules. The candidates who do not possess the preferential qualification are selected while the petitioners who possess such qualification are not selected. This point, however, has not been pressed at the time of hearing, advisedly so. The issue has been considered by me in the matter of PATEL NIKUNJKUMAR MAVJIBHAI v. DIRECTOR OF EMPLOYMENT AND TRAINING (Special Civil Application No.6623/01 decided on 21st March, 2002). The priority claimed by similarly situated candidates has been negatived. Considering the relevant recruitment rules and provision made regarding preference to be given to the candidates possessing the above referred preferential qualification I have held that, "the language of the above proviso is clear and unambiguous. It should necessarily mean that other things being equal the candidates possessing the additional qualification of certificate of Central Training Institute or the diploma shall be preferred. The said proviso can not be construed to mean that so long as the candidates possessing the additional qualification referred to in the aforesaid

proviso are available, other candidates though are otherwise eligible should not be considered for selection. The claim of priority made by the petitioners, therefore, requires to be rejected."

"6. There is a basic fallacy in the submission of Mr.Oza. Mr.Oza has vehemently argued that the petitioners were subjected to a written test and an oral interview. Having done so the merits of the petitioners acquired at such written test and the oral interview have not been considered. In fact, neither of the petitioners nor any other candidate has been subjected to written test. On the contrary, an averment is made in the petition that though the petitioners were called for interview, in fact the petitioners were not interviewed i.e. No questions were put to the petitioners but their mark-sheets and other certificates were verified. Upon inquiry, the petitioners had learnt that the interviews were mere formality and the appointments were to be given on the basis of the merit alone. Hence, it is apparent that even at the time of petition, the petitioners were aware that the merit alone was the criterion for selection. The submission, therefore, does not hold water and requires to be rejected. As regards the wider exposure it cannot be gain-said that a public advertisement would offer opportunity to a larger number of candidates. However, the selection can not be said to be bad or be set aside only on the ground that the public advertisement was not given and the names of the eligible candidates were requisitioned from the Employment Exchange Office.

7. On the above facts, the judgments relied upon by Mr.Oza shall have no applicability. The said judgments deal with a situation where the selection were made in accordance

with the existing recruitment rules. However, subsequent amendment to the rules rendered the selected candidates ineligible and such candidates were non-suited on the ground of their ineligibility under the amended/revised rules. Here is not the case where the petitioners are non-suited on the ground of their eligibility. Here is the case where the petitioners have not been selected on the basis on their comparative merits. Further, on perusal of the above referred Government Resolution dated 13th September, 2001, it appears that the formula worked out takes into consideration the additional / preferential qualification possess by the petitioners and such other candidates i.e. the candidates have been given marking for their basic qualification and also additional marks for the preferential qualification or higher qualification. Thus, the formula worked out by the respondent authorities also appears to be just and gives a fair consideration to the candidates having preferential qualification also. The judgment of the Hon'ble Supreme Court in the matter of SECRETARY (HEALTH) DEPARTMENT OF HEALTH AND F.W. (supra), the Hon'ble Court had an occasion to consider a similar matter. In the said matter, the Public Service Commission had issued advertisement for appointment to the post of Dental Officers. In the advertisement, it was clearly stipulated that the minimum qualification for the post was B.D.S. It was also stipulated that preference should be given for higher dental qualification. There was no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post. The selection of Dental Officers made pursuant to the said advertisement was challenged on the ground that the writ petitioner who had the qualification of M.D.S. was entitled to be selected on the basis of higher qualification. The claim was negatived by

> *the Hon'ble Court. The Hon'ble Court held that, "the question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage is to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed."*

7. The learned Assistant Government Pleader Ms.Natani submitted that the aforesaid decision of the learned Single Judge was challenged in Letters Patent Appeal No.653 of 2003 and other Letters Patent Appeals. The Division Bench [Coram: G.S.Singhvi, J (as he then was) and Anant Dave, J.] dismissed the said group of Letters Patent Appeals by order dated 6th May 2005 confirming the decision given by the learned Single Judge. According to learned Assistant Government Pleader Ms.Natani, the said contentions, which are raised by the petitioners, are already considered by this Court and the decision rendered by the learned Single Judge is confirmed by the LPA

Bench and, therefore, no further challenge is to be entertained and considered by this Court.

8. I have considered the submissions made by both the learned advocates. Ms.Mandavia, learned advocate for the petitioners, submitted that the comparison, which has been made in reply by the respondents, is with reference to ITI and not to the CTI and the CTI is having higher qualification than the diploma and that in the petitions filed before the learned Single Judge, as referred to above, selection list was under challenge and the policy was not challenged. In LPA decision, it was kept open for the appellants to challenge the policy as and when contingency arises. No doubt, that was kept open for those appellants, who were before the Division Bench and not for other persons. Meaning thereby, it is kept open for those appellants who were before the Division Bench and not for other persons, which include the present petitioners. Apart from that, the petitioners have challenged the policy before this Court.

9. The contention raised by learned advocate Ms.Mandavia for the petitioners is that CTI Course is higher than diploma course, but no basis is pointed out on what basis she submitted that the CTI course is higher than diploma course. The department while considering the course of CTI as well as diploma decided that both were entitled to preference marks (Item No.4, Page 24), and CTI is entitled to five marks and diploma holder is also entitled to five marks. Therefore, in calculation, in real sense, there is no discrimination between the CTI and diploma holders. Both the course are getting preference and also getting five marks in calculation. On page 25, Paragraph 7 where the calculation was considered, it is mentioned that out of total mark so obtained, cumulatively five marks per trial could be deducted if the candidate has taken more than one trial in obtaining any one of the certificates, i.e. SSC or National Trade Certificate or National Apprenticeship Certificate. Similarly, additional five marks per year would be deducted for those diploma holders who have taken more than stipulated period of diploma i.e. 3 years. Page 26 is

the letter of Additional Director, Employment & Training Department, to the Joint Secretary, Labour & Employment Department, Gandhinagar, dated 23rd November 2006 wherein it is specifically made clear by giving reference of the meeting with the Chief Secretary, that for the recruitment to the post of Craft Instructor, minimum diploma or degree qualification is to be considered necessary because Craft Instructor has to give training to the students and, therefore, he must be possessing higher qualification in comparison to the students, who are to be taught by the Craft Instructor. This benefit would be available from the degree/diploma holder candidates and such candidate can give good training to the students of COE, Short Term Module Training, and merit is also to be maintained while giving training to such students. Therefore, opinion was given by the Additional Director that for the post of Craft Instructor, minimum education qualification of diploma/degree holder is required to be maintained and accordingly, the Recruitment Rules is amended. There is one another letter from the Director of Employment & Training Department addressed to

Principal Secretary, Labour & Employment Department dated 4th July 2006 wherein this question has been examined in detail in the light of the earlier decision given by the learned Single Judge as referred above. The Committee was constituted to consider the question whether CTI is to be preferred or diploma holder is to be preferred and the Committee has given opinion, which is on Pages 46, 47 and 48. There is no injustice in merit system or calculation to the candidates of CTI/ATI. The merit system or calculation as per the Government Policy dated 13th September 2001 is considered to be proper, reasonable and valid. The Committee has considered the ITI/Apprentice and CTI/ATI passed candidates having knowledge of a particular field, but diploma holder is having knowledge of each branch and, therefore, he is able to give good training and to maintain merits while giving training to such students. The Committee has given opinion that the formula, which was prepared in policy dated 13th September 2001, is considered to be proper. However, the Committee has also considered 3 diploma/degree candidate against 1 CTI/ATI passed candidate, meaning

thereby 3:1 recruitment is to be made between the Diploma/Degree holder and the CTI/ATI. This letter was written because of letter given by one Mr.Yogeshkumar D. Patel and others, who were CTI/ATI. Except these, no other documents are produced on record by the petitioners.

10. In view of the aforesaid details, the weightage is given to the diploma holder in the policy. While preparing the policy, percentage has been made specifically clear in reply that how much percentage is required by the diploma holder, CTI, ITI.

11. In the light of this background, the question is whether this Court can interfere with such policy, which has been framed with application of mind and taking care of candidates of CTI/ITI/Diploma holders. Learned advocate Ms.Mandavia for the petitioners is not able to point out before this Court that CTI is higher than the diploma holder. However, in reply of the respondents, specific averments are made that ITI is one of the

qualifications, but CTI is a training course and diploma holder is also an independent educational qualification course, but the respondents have considered both the course together and that the diploma holder is higher qualification and requires weightage. Accordingly, the weightage has been given by the department in calculating marks for such candidates.

12. Learned advocate Ms.Mandavia appearing for the petitioners, at this stage, submitted that to have admission in CTI, a person must pass SSC and have one year apprenticeship training then a person will get admission in CTI Course. The CTI course is of one year. According to her submission, after completion of one year CTI, a candidate is getting certificate of teaching for a specific trade either mechanic or electric. Therefore, the CTI is higher than the diploma.

13. Learned Assistant Government Pleader Ms.Sandhya Natani appearing for the respondent State Authorities submitted that for ITI even standard 8

failed or passed, standard 7 passed having 60% is entitled to get admission in ITI whereas in Diploma Course, person must pass 10th Science having merit more than 85% then only he will get admission in the course, which has been prepared by the Centralized Committee for admission in the entire Gujarat. The CTI candidate is only having training certificate and diploma course is having higher merits for admission having knowledge of all the Branch. Therefore, according to the learned AGP, Diploma Course is higher and meritorious.

14. This Court has purposely given the aforesaid details. As such, there is no need to give the said details by the Court. The policy is framed by the Expert Committee or persons, those who are competent and experts, to frame such policy. The Court has to only consider whether the policy framed is arbitrary, capricious or violative of statutory rights or creating any discrimination between the persons and then only the Court can entertain such petitions.

15. Recently, the Apex Court has examined this

question in detail in the case of *Indian Airlines Officers' Association vs. Indian Airlines Limited & Ors., 2007 (9) SCALE 479.* Therein, the Apex Court has observed as under:

> *"Any policy decision, unless the said decision was arbitrary, unreasonable or capricious, cannot be challenged merely because some of the employees would suffer in terms of seniority and ultimately in terms of their further chances of promotion, the whole scheme cannot be rejected as discriminatory or arbitrary."*

Specific observations are made by the Apex Court in paragraphs 29, 36 and 37, which read as under:

> *"29. That was a case of quota. Here if the erstwhile Vayudoot employees are being fixed horizontally as the junior most employees of that post there would be no question of injustice to Indian Airlines employees. As held by the Supreme Court in the aforementioned case "if some of the employees suffer because of the merger of absorption or some employees would be of the same field but of the different organizations that by itself, would not be a reason to eradicate the whole scheme if the scheme is not found malafide and or unreasonable." We do not think that the scheme by itself was malafide and or unreasonable. In paragraph 16 also, the Supreme Court expressed:*

> *"16. ... For argument's sake, let us assume that there is a volte face on the part of the government in shifting its stand in the matter of computation of seniority with reference to length of service. Surely, policy is not static but is dynamic and what weighed with the government when panchayat institutions were amalgamated with the District Board institutions might have been given up in the light experience or changed circumstances, What was regarded as administrative impractical might, on later thought and activist reconsideration, turn out to be feasible and fair. The Court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls. It is impossible to maintain that the length of service as District Board employees is irrational as a criterion. ....."*

36. In Balco Employees Union (Regd.) vs. Union of India [(2002) 2 SCC 333], this Court opined that in the case of policy, the employee may suffer to certain extent, but such sufferings should be taken to be incidence of service. Therein, the Court observed:

> *48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz., Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior*

notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of post pursuant to a policy decision does not attract the provisions of Article 211 of the Constitution as held in State of Haryana vs. Des Raj Sangar on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights of protection under Articles 14 and 16 of the Constitution." (Emphasis supplied).

This leaves us with the cases cited by Shir Rao. According to him, the principles in State of Maharashtra & Anr. vs. Chandrakant Anant Kulkarni & Ors., [(1981) 4 SCC 130] which were followed in the subsequent cases. The decision was relied upon pre-dominantly for the observations made in para 10 which are as under:

"The following principles had been formulated for being observed as far as may be, in the integration of government servants allotted to the services of the new States:

In the matter of equation of posts:

i) Where there were regularly constituted similar cadres in the constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but

ii) Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts-

(a) nature and duties of a post;

(b) powers exercised by the officers holding a post, the extent of territorial or other charges held or responsibilities discharged;

(c) the minimum qualifications, if any, prescribed for recruitment to the post, and

(d) the salary of the post."

It is well settled that these principles have a statutory force."

37. The contention of Shri Rao was that these principles were ultimately followed in Union of India & Ors. Vs. S.L.Dutta and Anr. [(1991) 1 SCC 505 as also in S.P.Shivprasad Pipal vs. Union of India & Ors. [(1998) 4 SCC 598]. In our view in the peculiar facts and circumstances of the case these decisions cannot help the appellants. On the other hand some of the observations would run counter to the interest of the appellants. As regards Chandrakant Anant Kularni's case (supra), the contention of the learned Senior Counsel was that the learned Single Judge had correctly relied upon those principles to strike down the impugned notification dated 5.2.2001. Learned counsel very strongly urged that the cadres of Vayudoot employees was not comparable with the cadres of Indian Airlines and, therefore, before their fusion, or as the case may, merger was made, meticulous care was bound to be taken considering the different nature and duties of the post, powers exercised by the officers holding the post, minimum qualifications required for the post as also salary of the post. Learned counsel urges that all this was not done at

all. Learned counsel also heavily relies on the impugned judgment of the learned Single Judge Pradeep Nandrajog, J. We are unable to accept these contentions as, prima facie, we do not find any evidence that there was no consideration of the factors A to D enumerated in sub-para II of para 10. In fact, the long deliberations which went on perhaps as a sequel of demands made by the Vayudoot employees ought to have and did in fact include these factors. Shri Nageshwar Rao pointed out that the basic structure of the service in Vayudoot and Indian Airlines was comparable if not entirely identical with each other. He was at pains to point out that integration was made between the well constituted similar cadres in the two organizations in the same field of activity having similar structures and posts. Learned Senior Counsel pointed out that the duties of the managerial staff could not have been much different in Indian Airlines from the duties of Vayudoot employees. Their activities were same, both being the domestic air carriers. Even the nomenclature of the cadres were more or the less similar. There was no specific evidence put before us that the managerial cadres in Indian Airlines had very high qualifications, responsibilities, duties and salaries and such high responsibilities, duties and salaries were not applicable to the employees of Vayudoot. Our attention was repeatedly drawn tot he counter affidavit filed by Indian Airlines before Justice Rammoorthy where it was said that the two must bear in the mind that at that time the only question was as to whether the erstwhile Vayudoot employees could be allowed to complete for the higher posts in Indian Airlines when there was a complete compartmentalization between the employees of Vayudoot and Indian Airlines in the sense that the Indian Airlines employees could not be transferred to Vayudoot and vice-a-versa and further the SHOD employees were to be maintained as a separate and distinct

Department from the Indian Airlines. The defence raised in that case, at that time, could not be said to be a be all and end all of the matter so as to hold that the two cadres even at the later point of time were wholly incomparable so that they could not be integrated at all. We have already clarified above that the matter of integration or as the case may be, fusion of these employees was a matter of policy which had become necessary in order to contain the grievances of substantial number of Vayudoot employees. Any such policy decision, unless the said decision was arbitrary, unreasonable or capricious, could not have been challenged by the employees as rightly held by the Division Bench of the Delhi High Court, which judgment is impugned before us. There is a specific observation in S.L.Dutta's case, more particularly in para 18 thereof to the following effect:

> *"The court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in fixing of policy are of a highly technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and lawyers of courts can hardly be expected to have much knowledge by reasons of their training and experience. In the present case, there is no question of arbitrary*

departure from the policy duly adopted because before the decision not to promote respondent 1 was taken, the policy had already been changed. There was no question mala fides moreover the change in policy in this case cannot be said to be unwarranted by the circumstances prevailing as the matter was considered at some length by as many as 12 Air Marshals and the Chief of Air Staff of Indian Air Force ...”

These observations would make us slow in interfering with the policy decision. Even the managerial duties in the Indian Airlines as well as Vayudoot would involve the technical questions as to the nature of duties, training required and desirable qualifications. Again we cannot ignore the lengthy deliberations in various meetings to arrive at a proper decision taken by the responsible persons like Senior Officer of Ministry of Civil Aviation, Senior Officers including CMD of India Airlines as also the Ex-Director of SHOD and the Director (HRD) of Indian Airlines. In the wake of these personalities spending their valuable time to frame the policy regarding the fusion, we would be slow to interfere with such policy.”

16. Article 14 of the Constitution of India prohibits discrimination and not classification if otherwise such classification is legal, valid and reasonable. When different pay scales were fixed for trained teacher/lecturer on one hand and untrained lecturers on the other hand, it could not held illegal, improper or unreasonable infringing Article

14 of the Constitution. Looking to the facts of this case, having two different qualifications, not comparable with each other and preference and weightage having been given to the diploma holder, this is considered to be reasonable classification between the CTI and the diploma holder. Both are having different qualifications not comparable with each other and are not similarly situated in educational qualifications between the CTI and the diploma holder. In a recent decision, the Apex Court in the case of *State of Bihar & Ors. vs. Bihar State + 2 Lecturers Association & Ors., 2007 (5) Supreme Today, 557*, has observed in paragraphs 18, 19, 20, 21 and 27 as under:

> *"18. In State of Mysore & Anr. v. P.Narsinga Rao, [(1968) 1 SCR 407: AIR 1968 SC 349], different pay scales were prescribed for traders; one for matriculate tracers which was higher than the other for non-matriculate tracers which was lower. The action was held legal, lawful and not violative of Article 14 or 16 of the Constitution.*
>
> *19. The Constitution Bench of this Court stated:*
>
> > *"It is well settled that though Article 14 forbids class legislation, it does*

not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differential which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the objects sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule."

[Emphasis Supplied]

20. In State of Jammu & Kashmir vs. Triloki Nath Khosla & Ors., [(1974) 1 SCC 19], this Court upheld the classification for promotion on the basis of academic and technical qualifications. It was contended on behalf of the diploma-holders that classification sought to be made by the State between 'degree-holders' and 'diploma holders' was illegal and artificial and denial of promotion to diploma-holders while granting such benefit to degree-holders had violated Article 14 of the Constitution. But the argument was negatived.

21. Chandrachud, J. (as His Lordship then was) stated:

"On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any

fortuitous circumstance and one has always to bear inn mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficient which comes in the trail of higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunities to these possessing higher educational qualifications. And we are concerned with the reasonableness of the classification, not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact, American decisions have gone as far as saying that classification would offend against the 14th Amendment of the American Constitution only if it is "purely arbitrary, oppressive or capricious" and the inequality produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonably and arbitrary". We need not go that far as the differences between the two classes graduates and diploma-holders furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision."

[Emphasis Supplied]

27. In Andhra Kesari Educational Society v. Director of School Education & Ors., [(1989) 1 SCC 392], this Court emphasised the need and importance of trained teachers in schools. Speaking for

the Court, Jagannatha Shetty, J., made the following illuminating observations:

> *"Before parting with the case, we should like to add a word more. Though teaching is the last choice in the job market, the role of teachers is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the 'engine' of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energized with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. He must keep himself abreast of everchanging conditions. He is not to perform in a wooden and unimanginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore, needless to state that teachers should be subjected to rigourous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill-trained or sub-standards teachers would be detrimental to our educational system; if not a punishment on our children. The government and the University must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration."*

17. It is prerogative and authority of the employer to lay down suitable service conditions to

the respective posts. In service jurisprudence, the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities, which are entrusted to the candidates after their selection to a particular post. The Apex Court in the case of *Surinder Singh vs. Union of India & Ors., (2007) 4 MLJ 626 (SC)* relying upon the decision of the Apex Court in (1993) 2 SCC 310 observed in paragraphs 16 & 17 as under:

> *"16. In our view, in service jurisprudence the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities, which are entrusted to the candidates after their selection to a particular post. All the more, it is important for efficient and effective administration. The basis object of prescribing a minimum qualification is to put a cut off level for a particular job in accordance with the minimum competency required for the performance of that job. The object of prescribing preferential qualification is to select the best amongst the better candidates who possess more competence than the others. Sub-clause (iv) of Clause 2 puts a limit with respect to preferential qualification by way of a clear stipulation that no preference should be given to the qualification above*

Matriculation. Hence, the preferential qualification was considered to be more effective and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question. .....

17. In Government of Andhra Pradesh v. P.Dilip Kumar and Another (1993) 2 SCC 310, this Court in paragraph 13 held as under:

"13. .... There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a catena decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme.

Further, in paragraph 15 it is observed as under:

15. ... It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone consideration."

18. In view of the observations made by the Apex Court in the aforesaid three cases and considering the basic facts that the CTI and the diploma holder are not equal for the purpose of educational

qualifications, they both cannot be considered to be similarly situated candidates and, therefore, weightage and preference given to diploma holder is a reasonable classification and it cannot be considered to be discrimination or arbitrariness on the part of the Department in view of the observation of the Apex Court in the case reported in *2007 (9) SCALE 479*, which is as under:

> *"The Court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls. It is impossible to maintain that the length of service as District Board employees is irrational as a criterion. ....."*

19. In the Government Policy or administrative action or decision, this Court is having a limited scope of judicial review. This Court cannot act as an Appellate Authority against the policy decided by the State Government. The policy is prepared or drafted by the expert committee of persons, who are competent and experts in the field and thereafter such policy is decided. In the facts of this case, the policy

remains continued for more than six years and earlier selection was also based on present policy, which selection was upheld by the learned Single Judge and confirmed by the Division Bench of this Court. The only difference is that in this case, policy is under challenge. The petitioners are not able to establish or demonstrate as to how their legal right is violated or statutory right is infringed or consequential right including fundamental right is violated while enacting the policy by the State Government. Learned advocate Ms.Mandvia for the petitioners is also not able to demonstrate before this Court that how this policy is arbitrary or discriminatory. The educational qualifications of ITI and diploma holder both are altogether different. The CTI is a training course and not a study course. The diploma is a study course and entry in diploma course requires more than 85%. There are different passing standards between the two course including CTI, details of which are given by the respondents in their reply. Though the reply is received by the petitioners, no counter affidavit is filed by the petitioners denying the averments made by the

respondents. In the light of the aforesaid background, the view taken by the Apex Court in *Ekta Shakti Foundation vs. Govt. of NCT of Delhi, AIR 2006 SC 2609,* may be seen:

> "While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. The scope of judicial enquiry is confined to the question whether the decision taken by the Govt. is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position that even if the decision taken by the Govt. does not appear to be agreeable to the Court it cannot interfere. The correctness of the reasons which promoted the Govt. in decision making is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation. In the matter of policy decisions or exercise of discretion by the Govt. so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Govt. the Court cannot interfere even if a second view is possible from that of the Govt."

20. It is necessary to note an important aspect that looking to the policy dated 13th September 2001 and advertisement issued by the respondents for the post of Craft Instructor basic educational qualification is specified. One is SSC or equivalent examination with maths and science is passed. In respect to technical qualification, ITI or Apprenticeship or three years apprenticeship in factory or minimum three years defence session in concerned trade or Diploma Engineer recognized by State Government (AICTE). Therefore, in basis educational and technical qualification, the CTI certificate means training course is not included. But Diploma Course (AICTE) is included as basic technical qualification. Therefore, while preparing calculation for merits, only basic educational and technical qualifications are considered. There is no scope to calculate merits of CTI as it is not basic technical qualification as required under the Recruitment Rules and Advertisement. So the submission of Ms.Mandavia, learned advocate, that in merit calculation, CTI Course is ignored and not considered, is without understanding the difference

between the basic qualification and preferential qualification. The merits is to be calculated on the basis of educational and technical qualifications, which are must for satisfying the eligibility of the post in question – Craft Instructor. For that it cannot be considered to be discrimination between Diploma Candidate and CTI candidate. Because both case not treated at par with and not similarly situated qualification. There is vast difference between the basic educational and technical qualification and preferential qualification. In comparison to technical qualification, the weightage is given to Diploma Candidate looking to percentage required for entry in diploma and candidate having knowledge of various trade as details are given in affidavit-in-reply by the respondents. So Diploma and CTI are not at all comparable nor at par and it is not technical qualification as per the Rules and the advertisement. The CTI is not higher educational qualification in comparison to Diploma holder. The preference / weightage given to Diploma Candidate against other basic technical qualification prescribed in advertisement and in comparison to

other basic technical qualification Diploma is certainly higher education. Therefore, accordingly policy dated 13th September 2001 is not discriminatory and arbitrary but on the contrary it is based on reasonable, rational and logical classification between the two basic educational and technical qualifications. The CTI Course is not included in two basic technical qualifications, but it is merely having place as preferential qualification and entitled to weightage as diploma being higher technical qualification is also entitled to preference and weightage. Therefore, the policy is not hit by Article 14 of the Constitution and on the contrary, calculation on merits between two basic technical qualifications with educational qualification is perfectly prepared with scientific method taking care in all respect that none of the candidates is put in to any disadvantageous situation. Therefore, according to my opinion, there is no discrimination and/or arbitrariness in the policy dated 13th September 2001 and on the contrary, it being reasonable, valid and legal policy, is not hit by Article 14 of the Constitution of India.

21. I have perused the policy dated 13th September 2001 and advertisement issued by the department, which is annexed to the affidavit-in-reply as Annexure-R-III, Page 73. In the policy and the advertisement, it is made clear that from CTI Training of Instructor, those who have passed or related branch diploma holders are entitled as per the prescribed merit method weightage, means CTI Candidates or diploma holders are entitled to weightage. In the Policy, Item No.4 (Page 22 of the petition) for diploma candidate given preference and or above calculation additional five marks to be given to such diploma holder candidate. Similarly as per 1 to 4 category candidate if cleared CTI and Diploma then such candidate entitled to additional five marks in addition to items No.4 and 5. So the CTI candidate as per the advertisement and policy is entitled to weightage. So the contention raised by learned advocate Ms.Mandavia that no weightage is given to CTI candidate is not correct and, therefore, not accepted. This fact is made very clear by the respondents in their affidavit-in-reply, against

which no counter or rejoinder is filed by the petitioners. The CTI Candidate cannot be considered to be higher than the diploma. Both are not comparable. The grievance of the petitioners against the policy is not well-founded. There is no discrimination between the two, CTI and diploma. The similar contention raised before the learned Single Judge is rejected on merits by this Court, against which LPA is also dismissed. Now, to raise the same contention before this Court only on the ground that in earlier group of petitions, policy was not challenged, but in fact, the decision on merits is binding to this Court as the same is confirmed by the Division Bench in LPA. The Policy, which is prepared by the respondents with scientific analysis examined by the expert committee as per the letter dated 4th July 2006 [Page 42, Annexure-E to the petition] and having opinion that the merit policy decided on 13th September 2001 is proper and reasonable. According to the committee opinion, ITI/Apprentice then to CTI/ATI passed candidate having only knowledge in particular field but diploma holders are able to give good training and maintain merits. Therefore, formula

adopted in the policy is perfect and proper. There is no injustice to the candidate of CTI in considering the merits between the diploma and CTI. The educational qualification of diploma is higher then candidate of CTI and CTI is not educational qualification, but merely a training course. That comparison between the CTI and Diploma has been rightly analyzed with scientific method. There is rational and logical classification between them not hit by Article 14 of the Constitution of India.

22. In the light of the aforesaid observations made by this Court while considering the decisions of the Apex Court as well as keeping in mind the facts of this case, and considering the reply filed by the respondents and also properly understanding the calculation from the learned advocate Ms.Mandavia, according to me, the policy which has been framed by the department is perfectly justified, legal and valid and rightly weightage/preference is given to the diploma holder in comparison to the IIT/CTI as the educational qualifications are not same and similar. Therefore, it can be considered to be

reasonable a classification on the basis of educational qualifications possessed by such candidates. Therefore, there is no substance in the present petitions.

23. Accordingly, the present petitions are dismissed. Notice discharged. No orders as to costs.

[H.K.RATHOD, J.]

Rajendra